

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF OREGON**  
**PORTLAND DIVISION**

**SCOTT GARNETT BOYD;**  
**CARLOS LEE SMITH,**

Petitioners,

No. 3:23-cv-00777-CL

No. 3:23-cv-00778-CL

v.

**ORDER**

**PATRICK GARRETT,**

Respondent.

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AIKEN, District Judge.

This case comes before the Court on a Findings and Recommendation (“F&R”) filed by Magistrate Judge Mark Clarke. ECF No. 31. Judge Clarke recommends that Respondent’s Motion to Dismiss, ECF No 11, be granted and the petitions dismissed.

Under the Federal Magistrates Act, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate judge’s findings and recommendations, “the court shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate judge’s findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) (“There is no indication that Congress,

in enacting [the Act], intended to require a district judge to review a magistrate's report to which no objections are filed."). Although no review is required in the absence of objections, the Magistrates Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Id.* at 154. The Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the court should review the recommendation for "clear error on the face of the record."

In this case, Petitioners have filed Objections to the F&R, ECF No. 35, Respondent has filed a Response to the Objections, ECF No. 38, and Petitioners have filed a Reply brief, ECF No. 41. The Court has reviewed the F&R, the Objections, and the Record and finds no error. Judge Clarke's F&R is therefore ADOPTED and Respondent's Motion to Dismiss, ECF No. 11, is GRANTED. The Petitions are DISMISSED and final judgment shall be entered accordingly.

It is so ORDERED and DATED this 12th day of February 2024.

/s/Ann Aiken  
ANN AIKEN  
United States District Judge